

IN THE CROWN COURT IN NORTHERN IRELAND

---

R -v- LANA TERESA O'NEILL

---

WEATHERUP J

[1] Lana O'Neill, on 9 December 2008 you were convicted by a jury of the murder of Francis Gerard Saunders on 10 September 2006. On a conviction for murder the sentence is prescribed by law as being life imprisonment.

[2] I must now determine whether to impose a minimum term of imprisonment to be served before you can be considered for release. The present procedure was introduced by the Life Sentences (Northern Ireland) Order 2001, which came into force on 8 October 2001. Where a Court passes a life sentence the Court may specify a part of the sentence to be served before the prisoner can be considered for release. This period may be described as the tariff or the minimum term.

[3] It should be emphasised that the Court, in specifying part of the sentence, is not setting a release date. The procedure under the 2001 Order is that -

(i) The Court may specify the part of the sentence to be served before the release provisions apply. The Court has the option of not specifying any part of the sentence. In effect the Court determines the future date on which you will be considered for release on licence, or parole as it now seems to be popularly described.

(ii) The part of the sentence specified by the Court "shall be such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it." The minimum

term is intended to reflect the seriousness of the offence, rather than the risk posed by the offender.

(iii) The minimum term, unlike other determinate sentences, is not subject to normal remission rules where prisoners may receive remission of one half of the stated sentence. A minimum term of say 12 years specified in respect of a life sentence is the equivalent of a determinate sentence of 24 years on which full remission is earned.

(iv) After the specified part of the sentence has been served the Parole Commissioners will direct your release if “satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined”. Accordingly, future risk to the public determines the release date, after completion of the period served for retribution and deterrence.

(v) The Secretary of State will order release on licence for the remainder of your life, and you can be recalled to prison if you do not comply with the terms of the licence.

[4] After a similar regime was introduced in England and Wales, Practice Statement (Crime - Life Sentences) [2002] 3 All ER 412 was introduced on 31 May 2002. The Practice Statement offered “guidance” to the judges although they retained discretion to depart from the guidance if that was considered necessary in the circumstances of an individual case. The application of this Practice Statement in Northern Ireland was approved by our Court of Appeal in R v McCandless [2005] NI 269 and Attorney General’s Reference (No 6 of 2004) [2005] NIJB 395 (Doyle).

[5] The approach of the Practice Statement of 31 May 2002 to adult offenders is as follows -

*“The normal starting point of 12 years*

10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

*The higher starting point of 15/16 years*

12. The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was 'professional' or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.

*Variation of the starting point*

13. Whichever starting point is selected in a particular case, it may be appropriate for the trial

judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

14. Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failure to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include: (a) the offender's age, (b) clear evidence of remorse or contrition; (c) a timely plea of guilty.

*Very serious cases*

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."

[6] The Practice Statement has been designed as a multi tier system. The normal starting point of 12 years may, exceptionally, be reduced where culpability is significantly reduced. The higher starting point of 15/16 years will be applied where the crime is especially serious. The highest minimum terms will be applied to very serious cases. This reflects the gradations in the seriousness of the crime of murder and admits of the flexibility that is necessary in completing the exercise of determining a minimum term on the basis of retribution and deterrence having regard to the seriousness of the offence.

[7] On 10 September 2006 you stabbed your partner Francis (known as Frankie) Saunders in a caravan that you shared in Newcastle, County Down. You had arrived at the caravan together on the evening of Friday 8 September 2006 and had attended a birthday party in a public house in Newcastle that evening. Some differences had emerged between you and Frankie at the end of that evening and the differences continued the following morning. By later in the day those differences had been set aside. It appears that those differences emerged out of your belief that Frankie had shown insufficient attention to you and excessive attention to certain other women. However on the Saturday evening you and Frankie had gone out together to the public house in Newcastle and returned to the caravan together in the early hours of Sunday morning. Frankie had consumed an extraordinary amount of alcohol as he had a blood/alcohol reading in excess of 350 mgs per mls. On the return to the caravan your differences re-emerged. The evidence of the witnesses would indicate that you were berating Frankie and he was largely passive. At some point you stabbed Frankie in the chest with a kitchen knife. He may have been unaware of the nature or the extent of his injuries by reason of his alcohol consumption. In the event he died during the night in the shower room in the caravan.

[8] You were born on 21 October 1955 and are therefore 53 years old. You experienced a difficult upbringing as your father had alcohol problems and you spent periods of your childhood with your grandmother. You married at 17 and had 3 children during a marriage that lasted 25 years before separation. You experienced difficulties in your marriage, no doubt contributed to by an alcoholic husband. You began a relationship with the deceased in 2002. He too had difficulties with alcohol. You have your own

problems with alcohol which you will not admit. Your actions have been a tragedy for your daughters who are distressed that their mother should find herself in this position. A letter from your daughter conveys the sense of disbelief that these events should have happened and that you are subject to life imprisonment.

[9] Frankie's family have of course lost a loved member of their family and their distress has been compounded by your denials of responsibility for his death. Frankie was divorced and had two daughters and a granddaughter. He came from a large family and is survived by his parents and eight brothers and sisters. Three letters have been received from the family. The letters convey the profound sense of shock, distress, dismay and anger as to the manner in which you have responded to your involvement in the death.

[10] You have denied throughout that you stabbed Frankie. It is clear that you did so, as the jury have found. When you stabbed him in the chest with a knife you must have intended to kill or to cause serious bodily harm, as the jury have found. When you committed the stabbing you were not suffering from diminished responsibility, as the jury have found.

[11] The normal starting point for a minimum term is 12 years. The normal starting point does not apply where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position so as to warrant the higher starting point of 15 or 16 years in the instances set out in paragraph 12 of the Practice Statement. I am satisfied that none of the specified instances applies in your case and that there is no other feature of the case that warrants the application of the higher starting point.

[12] It therefore falls to be determined whether, exceptionally, the normal starting point should be reduced because your culpability was significantly reduced. This may arise where the offender suffers from a mental disability which lowered the degree of criminal responsibility, although not affording a defence of diminished responsibility. Whether that example is applicable in your case is a matter of dispute between the prosecution and the defence.

[13] Professor Tom Fahy, Professor of Forensic Mental Health, gave evidence at your trial. You had had previous contact with psychiatric services. Professor Fahy identified specific problem areas, namely cognitive difficulties, as you function at the lower end of the average IQ spectrum and display communication difficulties, including remarkably poor focus, likely to be the result of a degree of brain damage and the low average functioning; alcohol misuse, with indicators that the extent of misuse was harmful; personality difficulties which could not be described as a personality disorder but did involve significant dependent, insecure and emotionally unstable personality traits; jealousy, amounting in the past to a diagnosis of a delusional disorder. Professor Fahy concluded that you suffered from an abnormality of the mind consisting of the combined effects of complex psychopathology, including

morbid jealousy, vulnerable personality traits and a degree of cognitive impairment. This combination of factors, coupled with the disinhibiting effects of alcohol, led in his opinion to an abnormal frame of mind at the time of the offence. Your frame of mind was dominated by exaggerated concerns about infidelity, perhaps fear of abandonment and limited control of disorganised aggressive impulses. This abnormality of mind he considered would have substantially impaired your responsibility for the acts committed. The jury did not accept the partial defence of diminished responsibility.

[14] Dr Fred Browne, Consultant Forensic Psychiatrist, gave evidence for the prosecution at the trial and did not agree that you suffered from an abnormality of mind that substantially impaired your responsibility. He stated his impression that you had abnormal personality traits that included difficulties with a sense of identity and chronic complaints relating to mood, a family history of nervous problems, disturbed and insecure early relationships, being factors which probably contributed to the development of disturbances or abnormal traits in personality. However this did not admit of a firm diagnosis of a specific personality disorder.

[15] Since your conviction Dr Browne has carried out a risk assessment. I bear in mind that the exercise of fixing a minimum term is concerned with retribution and deterrence and the Parole Commissioners will have to be satisfied on the issue of dangerousness at a future date when the minimum term has expired. However some of the factors in the risk assessment may be relevant to the minimum term. Historical Clinical Risk - 20 (HCR-20) comprises 20 identified risk factors which are rated as definitely present, probably or partially present or absent. The factors noted as definitely present are relationship instability, substance abuse, major mental illness, early maladjustment, prior supervision failure, lack of insight and unresponsiveness to treatment. These factors, other than prior supervision failure and unresponsiveness to treatment, are elements of the abnormal personality traits that characterise this case. They include 'major mental illness' which is based on the previous diagnosis of delusional jealousy, which is strongly correlated with violence.

[16] The Pre Sentence Report furnished by the Probation Service states clearly that you represent a risk of harm to potential partners but there is no evidence that you pose a risk of harm to the general public. You have been assessed as being medium risk of reoffending, reflecting the factors of alcohol abuse, distorted thinking, emotional instability and low self esteem. The factors relied on in the method of assessment adopted by the Probation Service also concern the presence of abnormal personality traits.

[17] Mr Montague QC for the defence referred to R v Kemp [2003] NICC 7 and R v Graham [2007] NICC 25. In both cases the defence of diminished responsibility had been available but in the first case a plea to murder had been entered and in the second case the jury had rejected diminished

responsibility. Submissions were made in each case that there should be a reduction in the normal starting point to reflect reduced culpability falling short of diminished responsibility. In Kemp, Nicholson LJ accepted three factors that significantly reduced culpability. One was a mental disorder that reduced his responsibility and the others were provocation by allegations of child molesting and provocation by threats of being shot. The minimum term was fixed at 8 years on a plea. In Graham, Stephens J concluded that the defendant was suffering from a combination of a depressive illness and a personality disorder that did occasion some lowering of his mental responsibility. However Stephens J did not consider that responsibility was 'significantly' reduced but he did take the lowering of his mental responsibility into account in fixing the starting point. That approach engaged the flexibility that should be brought to this exercise in that, while concluding that there was some reduction of responsibility, but that it was not 'significant' and therefore did not satisfy the wording of paragraph 11 of the Practice Statement, account may nevertheless be taken of that reduced responsibility. Stephens J also took account of two factors that pointed to the higher starting point, namely a vulnerable victim and the infliction of multiple injuries. Balancing all the considerations Stephens J adopted a starting point of 12 years. Having regard to mitigating factors relating to the offender that concerned the added deprivation arising from the need for medical treatment in Scotland and the added impact of prison on his mental health Stephens J fixed the minimum term at 11 years. Mr Montague also referred to R v Carlisle (1 February 2002), but this case was dealt with under the system that applied before the adoption of the Practice Statement of May 2002. At that time there was a lower tariff starting point of 8 years which Sheil J adopted; referred to the aggravating factor of using a dagger; discussed the false perception of the defendant that had been fuelled by alcohol; gave credit for great and genuine remorse; noted 16 months in custody and applied a minimum term of 6 years from the date of sentence.

[18] I am satisfied that you suffer from abnormal personality traits, although your condition is not such as amounts to diminished responsibility, nor does it reduce your culpability to any significant extent. I agree with what is implicit in the verdict of the jury, that you have maintained a false account of events and I do not accept that you have no memory of what occurred or that your claim that you were unaware of the circumstances of Frankie's death was an aspect of a mental disorder. Nevertheless your abnormal personality traits are a matter that I take into account. I propose to apply a starting point of 11 years.

[19] Having determined the starting point it is necessary to consider whether it should be varied upwards or downwards to take account of aggravating or mitigating factors which relate to either the offence or the offender.

There are no aggravating factors relating to the offence in the present case.



There are no aggravating factors relating to the offender in the present case.

Mitigating factors relating to the offence include spontaneity and lack of premeditation. I am satisfied that in the present case there was no premeditation and that this incident of stabbing Frankie with the kitchen knife occurred spontaneously after a prolonged airing of the differences that had developed.

Counsel on your behalf contends for an additional mitigating factor in that you did not intend to kill. He refers to the single stab wound and the position of the wound in the lower chest/ abdomen area. The position of the wound can hardly be said to be a matter of calculation on your part and while the single stab wound clearly evidences an intention to cause serious bodily harm it does not necessarily indicate an intention to kill.

There are no mitigating factors relating to the offender. You continue to maintain that you were not responsible for the death of Francis Saunders and you have shown no evidence of remorse or contrition. Mr Montague refers to your great regret for the death of Frankie and for the loss suffered by the Saunders family. I do not doubt that, but it does not amount to remorse, which requires a recognition of responsibility, which is absent in this case.

[20] Taking account of all the above matters the minimum term, to include any period already served in custody, will be fixed at 10 years before you can be considered for release. At the end of that period the Parole Commissioners will conduct hearings to determine whether you should be released.